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Mr. William F. Caton
Acting Secretary
Federal Communications Commission
1919 M Street, N.W.
Washington, D.C. 20554

Re: CC Docket No. 94-54, FCC Docket No. 95-149

Dear Mr. Caton:

In accordance with Section 1.1206(a)(2) of the Commission's Rules, 47 C.F.R. § 1.1206(a)(2), notice is hereby given of an *ex parte* communication regarding the above-captioned docket. On Friday, January 19, 1996, Mark Golden of the Personal Communications Industry Association (PCIA), R. Michael Senkowski and myself of Wiley, Rein and Fielding, counsel for PCIA, Gene P. Belardi of Mobile Media Communications, Christine Crowe of Bryan, Cave, counsel for Arch Communications Group, Inc., and Gerald S. McGowen of Lukas, McGowen, Nace & Gutierrez, counsel for PCS Development Corporation (PCSD), met with Michele Farquhar, James Coltharp, and Jackie Chorney of the Commission staff.

The purpose of the meeting was to discuss the imposition of resale obligations on paging providers. The topics discussed are fully reflected in the attached summary, which was left with those present at the meeting. In accordance with the Commission's rules, two copies of the summary are being submitted for inclusion in the docket file.

If you have any questions, please do not hesitate to call me at the number listed above.

Respectfully submitted,

Robert L. Pettit
Wiley, Rein & Fielding

Enclosures

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Paging Resale: *Regulation in Search of a Problem*

Pervasive federal regulation of paging resale is unnecessary and unwarranted. In addition, far from being "no harm, no foul," an affirmative paging resale obligation will impose enormous costs on paging companies -- placing upward pressure on rates. Paging resale is an area where the free market has worked -- without federal government intervention. The FCC should allow this market segment to continue to grow free of harmful regulatory intrusion.

Background

The FCC first adopted resale policies in the 1976 Resale and Shared Use decision.[1] There, the Commission held that tariff provisions restricting resale of interstate private line services were unjust and unreasonable in violation of Section 201(b) of the Communications Act and unreasonably discriminatory in violation of Section 202(a). In 1980, the Commission extended its resale policies to switched services[2] and, in 1981, to cellular[3] -- based each time on the need for federal regulation to stimulate competition.

In the CMRS Interconnection and Resale Second Notice of Proposed Rule Making,[4] the Commission tentatively decided to impose an affirmative resale obligation on all commercial mobile radio service (CMRS) providers. Included in this catch-all is the paging industry -- even though the Commission offered no specific findings about the extent of resale activity in the paging industry in the absence of regulatory requirements, the state of competition in the industry, or any specific benefit that would come from having resale obligations in the paging context. Significantly, most commenters addressing the issue agree that a mandatory resale obligation for paging is unnecessary and economically unreasonable.[5]

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1 Resale and Shared Use of Common Carrier Services and Facilities, 60 FCC 2d 261, 263 (1976), *recon.*, 62 FCC 2d 588 (1977), *aff'd sub nom.* AT&T v. FCC, 572 F.2d 17 (2d Cir.), *cert. denied*, 439 U.S. 875 (1978).

2 Resale and Shared Use of Common Carrier Domestic Public Switched Network Services, 83 FCC 2d 167 (1980).

3 Cellular Communications Systems, 86 FCC 2d 469, 511, 642 (1981), *modified*, 89 FCC 2d 58, *further modified*, 90 FCC 2d 571 (1982), *appeal dismissed sub nom.* United States v. FCC, No. 82-1526 (D.C. Cir. 1983).

4 Interconnection and Resale Obligations Pertaining to Commercial Mobile Radio Services, FCC Docket No. 95-149, CC Docket No. 94-54, 60 Fed. Reg. 20949 (April 28, 1995).

5 *See* Reply Comments of PCIA, CC Docket No. 94-54, at 8.

Personal Communications Industry Association
January 1996

Regulation in Search of a Problem

There is simply no need for federal government intervention to jumpstart competition in the paging marketplace.

- Paging is robustly competitive, with over 500 paging service providers nationwide[6] and at least 12 paging operators in most major markets.[7] In fact, the District of Columbia Yellow pages list dozens of companies providing paging services in the Washington metropolitan area.

- No paging provider has market power.[8]

- Resale already abounds in the paging industry. Resellers have emerged as successful participants in the paging marketplace without regulatory intervention. On the average, resellers account for thirty percent of paging activations per market.[9]

- The record is virtually devoid of reseller complaints about paging service provider practices. In fact, the Commission's own figures concerning pending complaints indicate that, as of December 6, 1995, there were no reseller complaints pending against paging operators.

- Given these facts, it should be no surprise that the paging marketplace already enjoys the purported benefits to be gained from a resale obligation:

  - Rates have steadily been declining;

  - New competitors are continually entering the paging marketplace; and

  - The paging industry is marked by innovation, efficiency, and numerous specialized service offerings.

These characteristics also distinguish paging from other industry segments subject to an affirmative resale obligation.

- The Commission has imposed an affirmative resale obligation only on service categories where an

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6 *See* Implementation of Section 6002(B) of the Omnibus Budget Reconciliation Act of 1993, 10 FCC Rcd 8844, 8854 (1995).

7 *Id. See also* R. Ridley, 1993 Survey of Mobile Radio Paging Operators, COMM., Sept. 1993.

8 The Commission has explicitly found that "all CMRS service providers, other than cellular service licensees, currently lack market power." Implementation of Sections 3(n) and 332 of the Communications Act - Regulatory Treatment of Mobile Services, 9 FCC Rcd 1411, 1467 (1994); *see also* Preemption of State Entry Regulation in the Pubic Land Mobile Service, 59 RR2d 1518 (1986).

9 Economic and Management Consultants International, Inc., The State of the U.S. Paging Industry: 1995, at 99-101 (June 1995).

individual provider or class of provider possesses market power.

- The Commission's decisions imposing mandatory resale obligations have been premised on the expectation that disallowing resale restrictions will increase competition, decrease rates, and spur innovation -- benefits that already exist in the paging marketplace.

- The following chart highlights the remarkable differences between the paging, cellular, and interexchange markets:

Significant Differences Between Paging, Cellular, and IXC Industries

	PAGING	CELLULAR	IXC
Resale Requirements Today:	No	Yes	Yes
Federal Tariffing:	No	No	Yes
State Tariffing:	No	No	Yes
State Rate Regulation:	No	No	Yes
FCC Non-Dominant Classification:	Yes	No	No Prior to 10/95
Facilities Based Carriers Per Market:	12 in major markets	2	4-5 in most areas
Market Share: (Nationwide)	15 carriers hold 60%	6 carriers hold slightly over 60%	1 carrier holds 60%

No Harm, No Foul?

Some proponents of federal intervention may argue that because paging resale is not a problem, there's no harm in regulating it.

Nothing could be further from the truth. Federal regulation costs money. In fact, a mandatory resale requirement will impose significant costs on the paging industry -- putting upward pressure on rates to the ultimate detriment of consumers.

National and regional paging companies provide service through hundreds of local operating companies. Under typical procedures, each local operator enters into individual resale agreements with local outlets for distribution of paging services.

As a result -- and because the paging resale market is so robust -- facilities-based carriers have thousands of outstanding resale agreements. For example, one of the larger paging companies has reported to PCIA that it has an estimated 3000 resale agreements. Another paging operator reports an estimated 2500 resale agreements. If one assumed that reviewing, renegotiating, and possibly replacing each of these contracts required one hour of attorney time at $200/hour, the cost to these two paging operators alone would be over $1 million.

This of course ignores attorney's fees and other costs that would necessarily be incurred if cellular-like

resale obligations were imposed on paging operators. PCIA estimates that an initial and ongoing review process will cost paging service providers tens of millions of dollars. Obviously, such an extreme regulatory burden will put substantial upward pressure on subscriber rates.

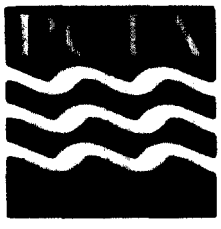
The Bottom Line

As the foregoing discussion demonstrates and as the Commission itself has acknowledged, the paging industry is already vigorously competitive.

In addition, the record confirms that price discrimination does not exist in the paging industry, that rates have been declining rapidly, and that new competitors are continually entering the paging marketplace as a result of new spectrum allocations and the lack of entry barriers.[10] Furthermore, new paging services are regularly evolving and innovation, efficiency, and specialized offerings are the hallmarks of the paging industry.[11]

In short, any benefits the Commission could hope to produce through imposition of an affirmative resale obligation have already been achieved. Moreover, most paging operators agree that an affirmative resale obligation will adversely affect provision of service to the public by creating unnecessary legal costs and administrative burdens.

Whatever the benefits of resale in other market segments, the costs of imposing resale obligations on paging operators far outweigh any potential gains. Paging resale is simply costly regulation in search of a problem.



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[10] *See* Reply Comments of PCIA, CC Docket No. 94-54, at 8.

[11] *Id.*